

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM M. MILLIGAN,

Defendant.

Case No. 08-CR-30234-3-NJR

ORDER

ROSENSTENGEL, District Judge:

This matter is before the Court on Defendant William Milligan's *pro se* Motion to Petition to Withdraw Guilty Plea (Doc. 169). Milligan was charged on November 4, 2008, with conspiracy to produce child pornography, conspiracy to transport minors with intent to engage in criminal sexual activity, and receipt of child pornography (Doc. 1). He entered an open plea of guilty to all the charges (Docs. 72, 73). On July 27, 2009, he was sentenced to 360 months' imprisonment (Doc. 113).

Milligan now seeks to withdraw his guilty plea based on the opinion issued last year by the Seventh Circuit in *United States v. Harden*, 758 F.3d 886 (7th Cir. 2014). In *Harden*, the Seventh Circuit held that magistrate judges are not permitted to accept guilty pleas in felony cases and adjudge a defendant guilty. *Id.* at 889. Milligan states that his own guilty plea was accepted by Magistrate Judge Donald G. Wilkerson, and therefore he must be permitted to withdraw it. Milligan is incorrect. Magistrate Judge Wilkerson conducted the Rule 11 plea colloquy, but he did not accept the guilty plea. Instead, he

entered a Report and Recommendation on the plea and recommended that the district judge accept the guilty plea (Doc. 71). Milligan's guilty plea was then accepted, and he was adjudged guilty by District Judge G. Patrick Murphy at the time of sentencing. The Seventh Circuit expressly approved of this practice in *Harden*. 758 F.3d at 891 ("There is widespread agreement that a magistrate judge may conduct a Rule 11(b) colloquy for the purpose of making a report and recommendation. We agree that this is a permissible practice.") (citations omitted).

Consequently, Defendant William Milligan's Motion to Petition to Withdraw Guilty Plea (Doc. 169) is **DENIED**.

IT IS SO ORDERED.

DATED: July 23, 2015

s/ Nancy J. Rosenstengel
NANCY J. ROSENSTENGEL
United States District Judge